



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: MLB Professional Services

File: B-232303

Date: August 26, 1988

DIGEST

Protest that agency was required by Federal Acquisition Regulation § 19.501(g) to issue solicitation as small business set-aside because previous requirement had been successfully acquired on basis of small business set-aside is dismissed where record shows previous procurement was not a small business set-aside.

DECISION

MLB Professional Services objects to the Department of the Army's decision to issue, as a small disadvantaged business (SDB) set-aside, solicitation No. DAHC77-88-B-1058 for mess attendant services at Schofield Barracks, Hawaii. MLB contends that the set-aside for SDB is not permissible because this service previously has been acquired successfully by the contracting officer on the basis of a small business set-aside. MLB contends that Federal Acquisition Regulation (FAR) § 19.501(g) (FAC 84-37) requires a small business set-aside in these circumstances. FAR § 19.501(g) provides that once a product or service has been acquired successfully by a contracting office on the basis of a small business set-aside, all future requirements of that Office for that particular product or service shall, if required by agency regulations, be acquired on the basis of a repetitive set-aside.^{1/}

The Army has advised our Office that the previous requirement was not competed as a small business set-aside. The

^{1/} We note that a Department of Defense interim rule published in the Federal Register on February 19, 1988, precludes the use of a SDB set-aside where the product or service successfully has been acquired previously under a small business set-aside. Interim rule § 219.502-72(b)(1), 53 Fed. Reg. 5,123 (1988) (to be codified at 48 C.F.R. § 219.502-72(b)(1)).

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Administration (SBA) under the section 8(a) program established by the Small Business Act, 15 U.S.C. § 637(a) (1982), and were awarded to an 8(a) firm. The Army offered this follow-on requirement to the SBA. By letter of July 14, 1988, the SBA advised the Army that the incumbent contractor has graduated from the 8(a) program and recommended that the Army set aside the procurement for SDBs. Under these circumstances, since the previous requirement was not acquired under a small business set-aside, the Army was not required to set aside this solicitation for small businesses.

The protest is dismissed.

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